

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kan S. Tham
Name of Case Attorney

3/14/12
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2011-0071

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Phoenix Divina Products, LLC
55 Container Dr.
Templeville, CT 06786

Total Dollar Amount of Receivable \$ 0 Due Date: N/A

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – New ENGLAND
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

2012 MAR 14 P 2:54
OFFICE OF
ENVIRONMENTAL STEWARDSHIP

Kan S. Tham
direct: (617) 918-1872

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

BY HAND

March 14, 2012

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Re: *In the Matter of: Phoenix Divina Products, LLC.*, Docket No. FIFRA-01-2011-0071;
Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filling the original and one copy of a Consent Agreement and Final Order (CAFO) resolving the above-entitled enforcement case. Also, enclosed are the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO was mailed to Respondent's representative, in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

Kan S. Tham
FIFRA Enforcement Coordinator
U.S. EPA Region 1

Enclosures

cc: John Haase, President, Phoenix Divina Products, LLC
Hugh W. Martinez, EPA Region 1, Senior Enforcement Counsel (electronically)

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

RECEIVED

2012 MAR 14 P 2:56

In The Matter Of:)
)
Phoenix Divina Products, LLC)
55 Container Dr.)
Terryville, CT 06786)
)
Respondent.)
_____)

Docket No. FIFRA-01-2011-0077
**CONSENT AGREEMENT and
FINAL ORDER**

EPA ORC
OFFICE OF
REGISTRAR &
HEARING CLERK

INTRODUCTION

1. The United States Environmental Protection Agency-Region 1 (“EPA”), as Complainant, and Phoenix Divina Products, LLC (“Phoenix” or “Respondent”), as Respondent, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Phoenix for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

4. Respondent is a corporation organized under the laws of the State of Connecticut. Respondent's principal place of business is located at 55 Container Drive, Terryville, CT 06786 (the "Facility"). Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

5. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about October 24, 1989, Respondent registered the Facility as a pesticide-producing establishment. EPA's national office in Washington, DC ("EPA Headquarters") assigned the Office of Pesticide Program company number 62655. Subsequently, EPA Region 1 assigned the EPA Establishment Number 62655-CT-001 to the Facility.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.

8. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer or

other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

9. On or about July 24, 2007, EPA issued a Notice of Warning ("NOW") [No. FIFRA-NOW-07-26] to Respondent, pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for the failure to file its annual pesticide production reports for calendar years 2004, 2005, and 2006 as required by Section 7 of FIFRA, on or before the March 1, 2005, 2006, and 2007 due dates. Phoenix received the NOW on or about July 31, 2007.

10. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

11. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

12. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and has fully addressed the violations alleged by EPA herein.

EPA FINDINGS

13. EPA finds, based on its investigation of facts and circumstances underlying Phoenix's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

14. During calendar year 2010 the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

15. EPA Headquarters mails annual reminder notices to registered pesticide-producing establishments of the FIFRA requirement to submit a production report. These reminders are mailed at least two months in advance of the March 1 reporting deadline. The reminder notices are sent as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so. On or about November 30, 2010, EPA Headquarters mailed a notice to Respondent at the Facility reminding Respondent of the requirement to submit an annual pesticide production report to EPA by March 1, 2011, for the 2010 calendar year.

16. Notwithstanding the March 1, 2011 due date; the reminder notice from EPA Headquarters; and issuance of the NOW, as described in Paragraphs 9 and 15, Respondent did not submit its pesticide production reports for calendar year 2010.

17. Respondent's failure to submit the required information to EPA for calendar year 2010 on or before March 1, 2011, constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failures are unlawful pursuant to Section 12(a)(2)(L) of FIFRA and are violations for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

TERMS OF SETTLEMENT

18. Respondent hereby certifies that it has voluntarily cancelled the FIFRA establishment registration for the Facility at 55 Container Drive, Terryville, CT (previously assigned the pesticide-producing establishment number 62655-CT-001). Respondent further agrees not to produce pesticides or pesticide devices at the Facility, nor to seek its re-registration under Section 7 of FIFRA, for a period of at least five (5) years from the effective date of this CAFO.

19. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements" (the "Penalty Policy"), and other factors as justice may require, EPA determined that it is fair and appropriate to mitigate the entire civil penalty in this case such that Respondent pays no civil penalty in resolving this enforcement action.

20. Notwithstanding the preceding Paragraph 19, in the event that, within 5 years of the effective date of this CAFO, Respondent violates Paragraph 18, above, by either re-registering the Facility under FIFRA or by producing pesticides or pesticide devices at the Facility, then, a stipulated penalty of \$4,950, plus interest, shall immediately become due and owing from Respondent, without demand by EPA, within (30) calendar days of such re-registration or production. Interest on such stipulated civil penalty shall be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R § 901.(b)(2), and accrue from the effective date of this CAFO until the date Respondent pays the civil penalty owed, in full, under this paragraph.

21. Respondent shall pay the \$4,950 civil penalty, plus interest, within thirty (30) days of the date the triggering event, as specified in the preceding Paragraph 20, and shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America" in the amount of \$4,950, plus all accrued interest, to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and:

Kan Tham, FIFRA Enforcement Coordinator
U.S. Environmental Protection Agency
Region 1 (Mail Code OES 05-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Respondent shall include the case name and docket number (*In re: Phoenix Divina Products, LLC*, FIFRA-01-2011-0071) on the face of the check.

22. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty.

Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United

States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

23. The stipulated penalty due and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violations alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

25. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

26. The undersigned representative of Respondent certifies that he or she is fully authorized to entire into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:

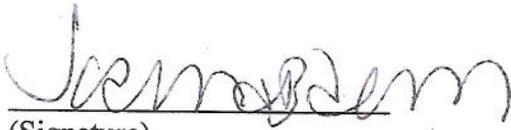
John Haase
(Signature)

President
(Title)

2.21.2012
(Date)

John Haase
(Print Name)
Phoenix Divina Products, LLC
55 Container Drive
Terryville, CT 06786

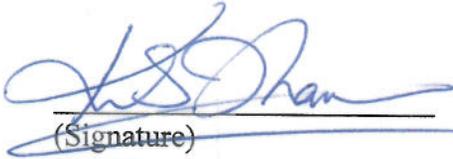
For U.S. EPA - Region 1:



(Signature)

Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA - Region 1

2/23/12
(Date)



(Signature)

Kan Tham, FIFRA Enforcement Coordinator
Toxics and Pesticides Unit
Office of Environmental Stewardship
U.S. EPA - Region 1

2/23/2012
(Date)

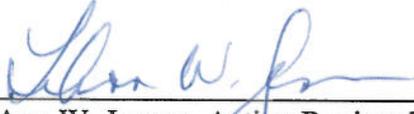
Of Counsel:

Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
U.S. EPA - Region 1

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Phoenix Divina Products, LLC, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

3/7/12
(Date)



LeAnn W. Jensen, Acting Regional Judicial Officer
U.S. EPA - Region 1

In re: Phoenix Divina Products, LLC
FIFRA-01-2011-0071

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CAFO and Cover Letter to the Regional Hearing Clerk have been provided to the following persons on the date noted below:

*Original and one copy,
Hand-delivered:*

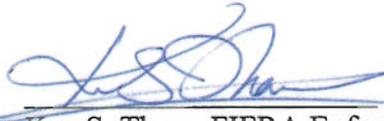
Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

*One copy by certified mail,
Return receipt requested:*

John Haase, President
Phoenix Divina Products, LLC
55 Container Drive
Terryville, CT 06786

Date: _____

3/14/2012



Kan S. Tham, FIFRA Enforcement Coordinator
U. S. EPA Region 1 (New England)
5 Post Office Square, Suite 100
Mail Code (OES 05-4)
Boston, MA 02109-3912
Phone (dir.): (617) 918-1872
Fax: (617) 918-0872
Email: tham.kan@epa.gov